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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

IVAN ROMANO,

Defendant and Appellant.

E064149

(Super.Ct.No. RIF1300015)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Becky Dugan, Richard Todd Fields, and Ronald L. Taylor, Judges.\* Affirmed.

Joshua M. Mulligan, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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\* Judge Taylor is a retired judge of the Riverside Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Defendant and appellant, Ivan Romano, pled guilty to a fraudulent claim for payment pursuant to an insurance policy. (Pen. Code, § 550, subd. (b)(1).)<sup>1</sup> After defendant filed six notices of appeal, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and identifying three potentially arguable issues: (1) whether the court violated defendant's Sixth Amendment right to counsel by removing appointed counsel for defendant's financial ineligibility several months after the public defender had begun working on the case; (2) whether defendant can challenge a Sixth Amendment violation where the plea bargain signed by defendant contained a waiver of appellate rights;<sup>2</sup> and (3) whether the court unreasonably limited cross-examination of a victim at the restitution hearing. We affirm.

## I. FACTUAL AND PROCEDURAL HISTORY

Defendant filed a police report and made an insurance claim after asserting a boat outdrive belonging to him was stolen. The insurance company paid out \$8,806.23 to defendant. Later, investigators found the outdrive had been damaged and sent by defendant to a marine shop.

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> The court denied four of defendant's requests for certificate of probable cause, but granted one of them. Only one of defendant's requests for certificate of probable cause was based on ineffective assistance of counsel. The court denied that request.

Defendant later filed an insurance claim alleging a boat belonging to him had been stolen. Investigators located the boat. Victim David Taylor reported he had paid defendant \$30,000 in cash for the boat and the accompanying, incomplete title documents. A review of surveillance footage from a bank supported the victim's account that he and defendant had met at a bank, the victim had given defendant cash, defendant had the cash counted at the bank, and the victim received the incomplete title documents for the boat.

The People charged defendant by an amended felony complaint with two counts of the fraudulent claim for payment of a loss under a contract of insurance (counts 1-2, § 550, subd. (a)(1)), defrauding an insurance company out of money exceeding \$950 (count 3, § 487, subd. (a)), defrauding an individual of money exceeding \$950 (count 4, § 487, subd. (a)), and filing a false police report (count 5, § 148.5, subd. (a)). In addition, the People alleged defendant had damaged or destroyed property of a value exceeding \$65,000.

On February 25, 2014, the court determined defendant was ineligible for court appointed counsel: "I looked at your bank statements and the tax forms, and you are not eligible for a public defender. You're what I call middle class broke, not poor. In other words, you have a business. You don't make a ton of leftover money, but you're not indigent."

On February 11, 2015, defendant pled guilty to an added count 7 offense of a fraudulent claim for payment pursuant to an insurance policy. (§ 550, subd. (b)(1).) In

return, the remaining counts and allegations were dismissed and the court sentenced defendant to 24 months' probation. As part of his plea agreement, defendant waived his right to appeal, agreed to pay restitution to the victims of both the offense for which he was convicted and the victims of the dismissed charges.

At a later restitution hearing, the victim testified he had purchased the boat and trailer from defendant for \$30,000. He had incurred other expenses in an amount of \$18,446.78.

During cross-examination of the victim, the court repeatedly sustained objections on the basis of relevance. Defendant's counsel eventually stated: "If I'm going to be precluded from in any way cross-examining this witness, I'd rather have the Court of Appeals address my issue." The court ordered defendant to sign over title to the boat to the victim and awarded the victim a total of \$18,446.78 in restitution.

## II. DISCUSSION

We offered defendant an opportunity to file a personal supplemental brief, which he has not done. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues. (*People v. Noriega* (2010) 48 Cal.4th 517, 525 [even court's erroneous disqualification of appointed counsel does not require reversal where the defendant does not show reasonable probability it altered the outcome]; *People v. Panizzon* (1996) 13 Cal.4th 68, 79-84 [where a defendant executes a valid waiver of his constitutional rights as part of his plea agreement, a defendant cannot raise a violation of constitutional rights on appeal

without the issuance of a certificate of probable cause]; *People v. Castelan* (1995) 32 Cal.App.4th 1185, 1188 [the denial of a request for a certificate of probable cause can only be challenged by the filing of a petition for writ of mandate]; *People v. Weatherton* (2015) 238 Cal.App.4th 676, 684-686 [a defendant's due process rights not violated where court refused to hear the defendant's testimony at restitution hearing]; *People v. Cain* (2000) 82 Cal.App.4th 81, 86-87 [a defendant does not have a constitutional right at the restitution hearing to confront and cross-examine employee who prepared probation report at restitution hearing]; *People ex rel. Harris v. Sarpas* (2014) 225 Cal.App.4th 1539, 1568, fn. 8 [right to cross-examination at restitution hearing, a civil proceeding, is found in the due process clause, not the confrontation clause which applies to criminal proceedings].)

### III. DISPOSITION

The judgment is affirmed.

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McKINSTER  
J.

We concur:

RAMIREZ  
P. J.

HOLLENHORST  
J.